NATIONAL LABOR RELATIONS BOARD

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NLRB CHAIRMAN GOULD SAYS RECENT BOARD RULINGS MAKE TEAM ACT UNNECESSARY, BUT LABOR LAW SHOULD BE CHANGED IN OTHER RESPECTS TO PROMOTE EMPLOYEE PARTICIPATION

Chairman William B. Gould IV of the National Labor Relations Board today stated that a series of five decisions rendered by the Clinton Board last year make the TEAM Act unnecessary. However, he urged Congress to change labor law in other respects so that employee involvement committees are promoted, "sham" unions discouraged, and wasteful litigation about what constitutes a labor organization eliminated.

Addressing a Indiana University Law School conference today in Indianapolis, Chairman Gould said Section 8(a)(2) of the National Labor Relations Act should be amended "to allow all employees and councils and quality work circles to function, addressing any and all subjects outside any cloud of illegality." He asserted the statute needs "to allow employers to devise proposals and assist such mechanisms free from liability so long as employee autonomy is protected and respected." He thought the Act's prohibition against employer assistance of employee participation committees should be eliminated altogether.

Commenting on some pending legislative proposals on this issue, Mr. Gould was critical of the TEAM Act and supportive of a bill by Congressman Thomas Sawyer. The Sawyer bill--which was proposed last fall as a substitute for the TEAM Act--is a "constructive approach," Gould said, because it is designed "to encourage productivity and quality teams without opening the door to sham unions." He added:

> We must move beyond the 'them and us' mentality of an adversarial model which excludes cooperation between employees and management. Employees should be able to collaborate with management in establishing such teams, setting the agenda for meetings, determining voting procedures for election of representatives and on debated issues.

The NLRB Chairman maintained that the Board's recent decisions interpreting Section 8(a)(2)--which forbids employer-dominated labor organizations--are clarifying the circumstances that an employer's involvement with an employee participation committee does not amount to unlawful domination. These decisions strongly support employee cooperation, he said, but unless the law is changed difficulties will remain in determining what constitutes a labor organization.

The current state of the law, Chairman Gould asserted, "subjects employees and employers to unnecessary and wasteful litigation and mandates lay people to employ counsel, when they are only attempting to promote dialogue and enhance participation and cooperation." He further stated:

> The law's insistence upon a demarcation line--a line admittedly made less rigid by the common sense approach that the Board undertook in both Stoody and Vons Grocery--between management concerns like efficiency on the one hand, and employment conditions on the other, simply does not make sense. The line is synthetic and inconsistent with contemporary realities of the workplace where it is impossible to distinguish between the pace of the work or production standards and quality considerations for which all employees can and should have responsibility.

As it has done in deciding cases, the Board has been promoting labor-management cooperation through administrative reforms as well, according to Mr. Gould. The goal is "to substitute mediation and the peaceful resolution of disputes for litigation," he said. Among the administrative reforms the Board has adopted are the following:

- Settlement Judges -- In appropriate cases, the Chief Administrative Law Judge may appoint a "settlement judge" to work with the parties informally in an effort to reach a settlement--thus avoiding the costs to the parties and the public, and the delay required by a formal hearing and possible appeals. If the settlement is not reached the case could be heard by a different judge who would not be privy to the discussions of the parties with the settlement judge.

- Bench Decisions -- ALJs are authorized, in appropriate simple cases, to dispense with post-hearing briefs or proposed findings and conclusions, to hear oral argument and to issue "bench decisions" either at the conclusion of the hearing itself or within 72 hours of that time.

During a one-year trial project that began in February 1995 using these methods, Chairman Gould estimated that more than a year of ALJ hearing days were saved as a result of settlement judge dispositions, resulting in savings to the NLRB of more than $100,000 in out-of-pocket hearing expenses and travel costs alone. The Board voted to make the new procedures permanent effective March 1, 1996.

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